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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,578	04/16/2004	Paul J. Mason	65856-0060	1760
10291	7590	09/21/2005	EXAMINER	
RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610			JOYCE, WILLIAM C	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/826,578

Applicant(s)

MASON ET AL.

Examiner

William C. Joyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10 12 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the First Office Action in response to the Election filed on July 5, 2005.

#### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on July 5, 2005 is acknowledged. The traversal is on the ground(s) that claims 1-9, 11, and 13 are applicable to all species, the species are sufficiently related that a through search would encompass a search for the subject matter of the other species, and the examination of the entire application can be made without serious burden. This is not found persuasive because MPEP 808.02 (B) states that the examiner can insist upon restriction when distinct species are classified together but have a separate status in the art. It is submitted that each disclosed species includes a separate subject of inventive effort, and therefore searching each species is considered to be a serious burden to the examiner. The requirement is still deemed proper and is therefore made FINAL.

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#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "radially floating cones" (claims 1 and 13), "trunnions are supported by ball bearings" (claim 7) and "said bearings are supported for movement in spherical surfaces of bearing races fixed to said housing" (claim 7), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-9, 11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "radially floating cones" is not fully understood because the figures illustrate each cone being attached to a shaft, wherein each shaft is radially supported by a bearing. Accordingly, it is understood the cones are configured to rotate about a predetermined axis defined by a respect bearing.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohn (US Patent 1,459,979).

Kohn discloses a CVT (Fig. 3) having a pair of axially spaced cones (35,36), a countershaft (51), a pair of wheels (53) mounted on the counter shaft, wherein the countershaft is configured to pivot about a pivot axis.

Kohn does not disclose each wheel of the pair of wheels having different diameters, but shows the wheels having the same diameter. It would have been an obvious matter of design choice to vary the size of the wheels, since such a modification would involve a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Further, it was well known in the art to change the diameter of a

gear and/or a friction wheel so as to vary the ratio between mating components. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the size of the wheels disclosed by Kohn, so that one of the pair of wheels is larger than the other one of the pair of wheels, motivation being to adjust the ratio between mating components.

Kohn does not teach the CVT having either two or three countershafts, but illustrates only one countershaft. However, it would have been obvious to one in the art to modify the device of Kohn with either two or three countershafts, motivation being to provide a transmission having a greater operating capacity.

With respect to claim 3, the limitation "via a forging process" is a method limitation in an apparatus claim and therefore is given limited weight. If the invention is in how the transmission component is made, Examiner suggests that applicant pursue claims drawn to the method of making the transmission component. An apparatus claim must define over the prior art in terms of its structure and not the method from which the apparatus is made. Further, the process of forging was known in the art for manufacturing transmission components to provide a relatively inexpensive component. It would have been obvious to one of ordinary skill in the art at the time the invention was made to integrally form the discs and countershafts of Kohn by forging, motivation being to provide a relatively inexpensive component which is easily assembled in the transmission.

With respect to claim 9, Kohn does not disclose software configured to control axial movements of the trunnion, but teaches a manual lever (55) used to set the

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position of the power wheels. It was well known in the transmission art to change a speed of a transmission using an automated mechanism having software. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Kohn with an actuator having software for setting the transmission speed, motivation being to provide a mechanized device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Joyce whose telephone number is (571) 272-7107. The examiner can normally be reached on Monday - Thursday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 9/13/15  
William C. Joyce